



Legislative Bulletin.....November 1, 2011

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H.R. 1002 – Wireless Tax Fairness Act of 2011 (*Lofren, D-CA*)

Order of Business: The bill is scheduled to be considered on Tuesday, November 1, 2011, under suspension of the rules requiring two-thirds majority vote for passage.

Summary: H.R. 1002 prohibits a state or local government from imposing any new discriminatory taxes on mobile services, mobile service providers, and mobile service property for five years after enactment unless a new tax applies “generally” to similar services, businesses, or property. The five-year moratorium leaves in place current state and local taxes in effect before enactment and does not apply to fees imposed on specific entities or class of entities “for a specific privilege, service, or benefit conferred exclusively on such entity or class of entities.” For example, the Federal Universal Service fee or E-911 communications fees are not impacted under this bill. The bill also establishes federal court concurrent jurisdiction with state courts for litigants to pursue legal relief for potential violations of this bill. Lastly, the bill requires a Government Accountability (GAO) study describing the extent to which taxes imposed by state and local jurisdictions on mobile services, mobile service providers, and mobile service property impact consumer prices as well as how the five-year moratorium created in H.R. 1002 affects prices.

Excluded from the statutory definition of “new discriminatory taxes” are new taxes or modifications to an existing wireless tax that:¹

- replaces one or more taxes on mobile services, mobile service providers, or mobile service property;
- is designed such that the new tax revenue is reasonably expected not to exceed the amount of tax revenues that would have been generated by the replaced tax or taxes; and

¹ Section 3(c)(3)(B)(i)-(iii) of H.R. 1002

- is a local jurisdiction tax that may not imposed unless voters approve the measure, the measure provides at least 90 days notice of the tax to mobile service providers, and is required to be collected from mobile service consumers.

Additional Information: H.R. 1002 seeks to address a “...history and pattern of discriminatory taxation faced by providers and consumers of mobile services...”² The bill’s Committee report ([Report 112-188](#)) highlights that the average combined state and local tax rate on wireless telecommunications services is significantly higher than the combined state and local sales tax rate imposed on the purchase of other goods and services.³

The bill’s sponsor and lead cosponsor (Rep. Trent Franks) circulated a Dear Colleague letter in support of the bill stating among other points that: “This legislation would simply create a period of tax stability, encouraging state and local governments to modernize their communications tax structure.”

Supporters of H.R. 1002 point to past Congressional precedent of remedying previous discriminatory state and local taxes on specific industries by referencing the passage of the Railroad Revitalization and Regulatory Reform Act of 1976.⁴

Committee Action: Representative Zoe Lofgren (*D-CA*) introduced H.R. 1002 on March 10, 2011, and the bill was subsequently referred to the Committee on Judiciary. The Subcommittee on Courts, Commercial and Administrative Law held a legislative hearing on the bill on March 15, 2011. The full Committee marked up the bill and reported the amended version out of Committee by a voice vote on July 14, 2011.

Administration Position: As of press time, no Statement of Administration Policy (SAP) has been released.

Outside Groups Supporting: Americans for Tax Reform, National Taxpayers Union, Council for Citizens Against Government Waste, Americans for Prosperity, Citizen Outreach, Digital Library, Washington Policy Center, Center for Individual Freedom,

² Section 2 (2) of H.R. 1002

³ Page 5 of the Committee [report](#) explains that in “...almost every state, the combined state and local tax rate on wireless telecommunication service is still significantly higher than the tax rate on other goods and services.” Other reports note that the combined federal, state, and local tax and fee burden of 16.3 % is two times higher than the average retail sales tax rate...since 2005 (*A Growing Burden: Taxes, Fees, and Government Changes on Wireless Service*, 59 State Tax Notes 478, Feb. 14, 2011)

⁴ 49 U.S.C. 11501. Congress enacted this law to “restore the financial stability of the railway system” by targeting state and local taxation schemes that discriminate against rail carriers. The law bars state and local jurisdictions from engaging in four forms of discriminatory taxation: 1) assessing rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property; 2) levying or collecting a tax on an assessment that may not be made in 1) above; 3) levying or collecting an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction; & 4) imposing another tax that discriminates against a rail carrier.

Small Business & Entrepreneur Council, Indian American Conservative Council, Discovery Institute, Competitive Enterprise Institute, Less Government, American Legislative Exchange Council, 60 Plus Association, Hispanic Leadership Fund, RightMarch.com, Frontiers of Freedom, Smart Business Hawaii, & Citizens for Limited Taxation.

Outside Groups Opposing: According to the Dissenting Views included in the accompanying Committee report, the American Federation of State, County, and Municipal Employees, the Federation of Tax Administrators, National Association of Counties, National League of Cities, United States Conference of Mayors, the International City/County Management Association, Government Finance Officers Association, and the National Association of Telecommunications Officers and Advisors oppose the bill.

Cost to Taxpayers: The CBO released a cost [estimate](#) for the bill on July 28, 2011. It estimates that enacting the bill would have no significant impact on the federal budget.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. It increases the influence of the federal government vis-à-vis states and local jurisdictions by preempting state and local authority to increase or create new taxes specifically on wireless service providers, consumers, and property for five years. This application of the interstate commerce clause permits Congress to regulate in this field since commerce involving wireless services naturally involves interstate transactions and business activities. Many conservatives argue that applying the interstate commerce clause to restrict state and local tax increases reduces the tax burden of state and local governments on its citizens.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. The CBO report explains that H.R. 1002 imposes an intergovernmental mandate “because it preempts the authority of state and local governments to create new taxes, or change existing taxes, on wireless services, providers, or property.” The estimate states that this preemption would not impose any cost on state, local, or tribal governments since it was unaware of any jurisdictions that planned to impose new wireless taxes in the next five years.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: Yes. The Committee report states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the clause 9 of rule XXI of the Rules of the House of Representatives.

Constitutional Authority: The Constitutional Authority Statement accompanying introduction of this bill states:

“Congress has the power to enact this legislation pursuant to the following:
Section 5 of the 14th Amendment to the Constitution and Congress’ plenary power

under Article I, Section 8, Clause 3 of the Constitution (commonly known as the “commerce clause”), in order to ensure that States and political subdivisions thereof do not discriminate against providers and consumers of mobile services by imposing new selective and excessive taxes and other burdens on such providers and consumers.”

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H.Con.Res 13 – Reaffirming “In God We Trust” as the official motto of the United States and supporting and encouraging the public display of the national motto in all public buildings, public schools, and other government institutions (Forbes, R-VA)

Order of Business: The bill is scheduled to be considered on Tuesday, November 1, 2011 under a motion to suspend the rules requiring two-thirds majority vote for passage.

Summary: H.Con. Res. 13 states:

“Resolved by the House of Representatives (the Senate concurring), That Congress reaffirms ‘In God We Trust’ as the official motto of the United States and supports and encourages the public display of the national motto in all public buildings, public schools, and other government institutions.”

Additional Background: According to the Concurrent Resolution’s prefatory phrases, statements from our nation’s leaders and references in our historical documents relating to our national motto date as far back to our country’s founding. In 1956, Congress passed and President Eisenhower approved of a Joint Resolution (P.L. 84-851) of the 84th Congress declaring “In God We Trust” the national motto of the United States.

Committee Action: Representative Randy Forbes (R-VA) introduced H.Con.Res. 13 on January 26, 2011. The Joint Resolution was referred to the Committee on the Judiciary which reported it out favorably on March 17, 2011 by a voice vote.

Administration Position: As of press time, no Statement of Administration Policy (SAP) has been released.

Cost to Taxpayers: The Congressional Budget Office has not released a cost estimate for H.Con.Res. 13. However, the Committee report [112-47](#) advises that the Concurrent Resolution does not contain any authorization of funding.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax

Benefits/Limited Tariff Benefits? Yes. The Committee reports explains that H.Con.Res. 13 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

Constitutional Authority: There is no Constitutional Authority Statement accompanying this Concurrent Resolution. The House rules adopted at the beginning of the 112th Congress exempt Concurrent Resolutions from the requirement to cite a bill's authority from a Constitutionally-derived power (aka, Constitutional Authority Statement). Only bills that, if enacted, have the force of law are subject to this citation requirement.

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**S. 1280 – Kate Puzey Peace Corps Volunteer Protection Act of 2011
(Sen. Isakson, R-GA)**

Order of Business: The bill is scheduled to be considered on Tuesday, November 1, 2011, under a motion to suspend the rules and pass the legislation.

Summary: S. 1280 mandates that Peace Corps volunteers undergo comprehensive sexual assault risk-reduction and response sexual assault training. This training will be developed by the Office of Victim Advocacy, which is a new office within the Peace Corps. When a volunteer arrives in their country of service, they will receive additional sexual assault training that is tailored to that specific country. This country-specific training will include training related to:

- Gender relations;
- Risk-reduction strategies;
- Treatment available in such country (including sexual assault forensic exams, post-exposure prophylaxis (PEP) for HIV exposure screening for sexually transmitted diseases, and pregnancy testing),
- MedEvac procedures, and
- Information regarding a victim's right to pursue legal action against a perpetrator.

Each Peace Corps applicant, before enrolling as a volunteer, will be provided with:

- Contact information for the Peace Corps Inspector General for purposes of reporting sexual assault mismanagement, wrongdoing, or violations;
- Clear guidelines regarding whom to contact, including the direct telephone number for the designated Sexual Assault Response Liaison (SARL) and the Office of Victim Advocacy and what steps to take in the event of a sexual assault or other crime; and
- Contact information of a 24-hour sexual assault hotline that would allow volunteers to anonymously
 - Report sexual assault;
 - Receive crisis counseling in the event of a sexual assault; and
 - Seek information about Peace Corps sexual assault reporting and response procedures.

The President is also required to develop a sexual assault policy that provides the following to the victim:

- “The option of pursuing either restricted or unrestricted reporting of an assault;
- “Provision of a SARL and Victim's Advocate to the volunteer;
- “At a volunteer's discretion, provision of a sexual assault forensic exam in accordance with applicable host country law;
- “If necessary, the provision of emergency health care, including a mechanism for such volunteer to evaluate such provider;
- “If necessary, the provision of counseling and psychiatric medication.
- “Completion of a safety and treatment plan with the volunteer, if necessary;
- “Evacuation of such volunteer for medical treatment, accompanied by a Peace Corps staffer at the request of such volunteer. When evacuated to the United States, such volunteer shall be provided, to the extent practicable, a choice of medical providers including a mechanism for such volunteers to evaluate the provider; and
- “An explanation to the volunteer of available law enforcement and prosecutorial options, and legal representation.”

Within one year of enactment, the President will establish goals, metrics, and monitoring plans for Peace Corps programs. The President will also conduct an annual confidential survey of Peace Corps volunteers regarding the effectiveness of Peace Corps programs and the safety of volunteers. The Peace Corps Inspector General shall report to Congress, biannually, on the results of this survey. Within two years of enactment and every three years thereafter, the Inspector General shall report to Congress on the evaluations implementation of the sexual assault risk-reduction and response training and the sexual assault policy. The President will establish a process for volunteers to anonymously report incidents of misconduct or mismanagement, or any violations of policy.

Additionally, if a volunteer requests removal from their location because they feel at risk of imminent harm, they will be removed as expeditiously as practical. After a volunteer has been removed, other volunteers may not be assigned to that location until an assessment and evaluation is complete and the site has been determined to be safe.

The President will also establish a policy on stalking that:

- “Requires an immediate, effective, and thorough response from the Peace Corps upon receipt of a report of stalking;
- “Provides, during training, all Peace Corps volunteers with a point of contact for the reporting of stalking; and
- “Protects the confidentiality of volunteers who report stalking to the maximum extent practicable.”

The President is required annually to submit to Congress a report regarding:

- “Sexual assault of volunteers;
- “Other crimes against volunteers;

- “The number of arrests, prosecutions, and incarcerations for crimes involving Peace Corps volunteers for every country in which volunteers serve; and
- “The annual rate of early termination of volunteers, including demographic data associated with such early termination.”

Within one year, the GAO will submit a report to Congress evaluating the quality and accessibility of health care provided through the Department of Labor to returned volunteers upon their separation from the Peace Corps. Within six months, the President shall submit a report to Congress on the costs, feasibility, and benefits of providing all volunteers with access to adequate communication, including cellular service and Internet access.

Sexual Assault Response Liaison: This legislation creates a Sexual Assault Response Liaison (SARL) for each Peace Corps country. This individual shall ensure that volunteers who are victims are moved to a safe environment, and the SARL will accompany the victim through the in-country response at the request of the victim. The legislation directs the SARL to immediately contact a Victim Advocate upon receiving a report of sexual assault.

Office of Victims Advocacy: This legislation establishes the Office of Victims Advocacy. This office will be headed by a full-time victim advocate. Peace Corps Medical Officers, Safety and Security Officers, and program staff may not serve as victim advocates. Additionally, the victim advocate may not have any other duties in the Peace Corps that are not reasonably connected to victim advocacy.

This Office will develop and update the sexual assault risk-reduction and response training and the sexual assault policy mentioned above. This office will also assist volunteers who are victims of crime by making such victims aware of the services available to them and facilitating their access to such services. This office shall give priority to cases involving serious crimes, including sexual assault and stalking.

Sexual Assault Advisory Council: This legislation establishes a Sexual Assault Advisory Council. This Council shall be composed of at least 8 individuals selected by the President. These Council members will be former volunteers who are not current Peace Corps employees. The Council will review the sexual assault risk-reduction and response training, and the sexual assault policy, developed by the Office of Victims Advocacy. Within 5 years the Council shall report to the President and the Senate Committees Foreign Relations and Appropriations, and the House Committees on Foreign Affairs and Appropriations, on their findings. Council members will not be considered U.S. government employees and shall not receive compensation other than travel expense reimbursement.

The legislation states that it is the sense of Congress that:

- “The Office of Victim Advocacy established under section 8C of the Peace Corps Act, as added by section 2, should provide an adequate number of victim advocates so that each victim of crime receives critical information and support;

- “Any full-time victim advocates and any additional victim advocates should be credentialed by a national victims assistance body; and
- “The training required under section 8A(a) of the Peace Corps Act, as added by section 2, should be credentialed by a national victims assistance body.”

The Director of the Peace Corps will be required to perform a review of the allocation and delivery of resources to Peace Corps beneficiary countries. This review will be conducted every three years. This review shall include the following, with respect to each country:

- “An evaluation of the country's commitment to the Peace Corps program.
- “An analysis of the safety and security of volunteers.
- “An evaluation of the country's need for assistance.
- “An analysis of country program costs.
- “An evaluation of the effectiveness of management of each post within a country.
- “An evaluation of the country's congruence with the Peace Corp's mission and strategic priorities.”

The amendments made by this legislation shall sunset within 7 years of enactment.

Offsets: The legislation directs the Peace Corps to eliminate various initiatives, positions, and programs within the Peace Corps to ensure that any and all costs incurred to carry out this Act are entirely offset. The legislation also directs the Peace Corps to ensure there is no net increase in personnel to carry out this legislation. The Peace Corps is also directed to report to Congress, within 60 days of enactment, the actions taken to ensure compliance with this act.

Additional Information: The legislation is named for Kate Puzey, a former Peace Corp volunteer, who was murdered in the African country of Benin after she reported a colleague for allegedly molesting some of the young girls they taught. A press release from the sponsor’s office can be [viewed here](#).

Similar legislation has been introduced in the House, by Rep. Poe (R-TX), H.R. 2337.

Committee Action: S. 1280 was introduced on June 27, 2011, and referred to the Senate Foreign Relations Committee. The Committee held a markup on September 21, 2011, and the legislation was approved, as amended. The legislation passed the Senate on September 26, 2011, by unanimous consent. S. 1280 was then referred to the House Committee on Foreign Affairs, which took no public action.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: CBO estimates that enacting S. 1280 would authorize \$1 million a year and total \$5 million over the 2012-2016 period. CBO’s report can be [found here](#).

Section 10 of the legislation directs the Peace Corps to eliminate “such initiatives, positions, and programs within the Peace Corps ... as the Director deems necessary to

ensure any and all costs incurred to carry out the provisions of this Act, and the amendments made by this Act, are entirely offset.”

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The legislation creates new policies and offices with the Peace Corps.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: [Senate Report 112-82](#) states that S. 1280 “contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.”

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: [Senate Report 112-82](#) contains no statement regarding earmarks/limited tax benefits/limited tariff benefits. However the legislation contains no earmarks.

Constitutional Authority: Senate Rules do not require a statement of constitutional authority to be submitted when introducing legislation.

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